

The House Committee on Governmental Affairs offers the following substitute to SB 83:

A BILL TO BE ENTITLED

AN ACT

To amend Title 36 of the Official Code of Georgia Annotated, relating to local government, so as to change certain local government provisions with respect to newly created municipalities; to provide for legislative intent; to provide for the offer of sale to certain qualified municipalities of county property used as police stations, fire stations, cultural properties, or vacant properties within the geographical boundaries of the qualified municipality; to provide for procedures, conditions, and limitations; to specify additional service delivery strategy requirements regarding garbage and solid waste collection and disposal fees and fire protection services fees; to provide for limitations with respect to the rezoning of territory proposed for inclusion in a new municipal corporation; to provide for the defeasance of the rezoning of territory proposed for inclusion in a new municipal corporation when such rezoning took place after a point in time; to provide for additional limitations and requirements in the event a new municipality is created in a county subsequent to a referendum in which bonded indebtedness is approved; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by revising subsection (c) of Code Section 36-31-8, relating to transition periods with respect to newly incorporated municipalities, as follows:

"(c) When a chartering local Act so provides for a transition period, on and after the first day the initial governing authority takes office, the governing authority may from time to time adopt appropriate measures to initiate collection within the territory of the new city during the transition period of all taxes, fees, assessments, fines and forfeitures, and other moneys. Where a particular tax, fee, assessment, fine, forfeiture, or other amount collected by the city during the transition period is specifically related to the provision of a particular government service or function by the county, the service or function shall continue to be provided by the county during the transition period ~~contingent upon payment by~~ provided

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1 that the city of shall pay to the county the actual direct cost of providing such service or
 2 function unless otherwise provided in a written agreement between the new city and the
 3 county. In the event of a dispute between the city and the county as to the amount of such
 4 actual direct costs either the county or the municipality may petition the superior court and
 5 seek resolution of the items in dispute. Such petition shall be assigned to a judge, pursuant
 6 to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county
 7 is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2
 8 who resides in another circuit. The visiting or senior judge shall conduct an evidentiary
 9 hearing or hearings as such judge deems necessary and render a decision with regard to the
 10 disputed items."

11 **SECTION 2.**

12 Said title is further amended by adding a new Code section to read as follows:

13 "36-31-11.1.

14 (a) As used in this Code section, the term:

15 (1) 'Appraised value' for a county owned property means the fair market value as
 16 determined by a Georgia general certified appraiser as of December 31 of the year prior
 17 to the date of incorporation. The county and the city shall agree upon the appraiser;
 18 provided, however, that, if the county and city cannot agree on an appraiser, either party
 19 may apply to the chief judge of the superior court of the county who shall appoint a
 20 qualified appraiser.

21 (2) 'Assigned capital assets' for a county property means county owned capital assets,
 22 including, without limitation, vehicles, trucks, equipment, computers, and furniture
 23 located at such property or used by county employees working at or stationed at such
 24 property as of the date of incorporation.

25 (3) 'Book value' for county owned capital assets means the book value of such assets
 26 determined in accordance with standard accounting practices as of the date the qualified
 27 municipality gives notice under subsection (h) of this Code section.

28 (4) 'Cultural property' means any qualified county property or facility, used in whole or
 29 in part as a park, green space, library, arts center, nature center, golf course, recreational
 30 facility, or any property or facility used for recreational, cultural, educational, or
 31 institutional purposes. Each cultural property shall be deemed to include assigned capital
 32 assets relative to that property.

33 (5) 'Date of incorporation' means the date the local Act creating a municipality becomes
 34 law.

35 (6) 'Qualified county property' means any property, including buildings and fixtures
 36 located on such property, used in whole or in part as a police station, fire station, cultural

property, or vacant property located within the municipality. Each qualified property shall be deemed to include assigned capital assets relating to such property.

(7) 'Qualified municipality' means any new municipality created by local Act which becomes law on or after January 1, 2007, or any existing municipality for which the 24-month transition period provided for in Code Section 36-31-8 has not yet expired.

(8) 'Vacant property' means any water drainage areas, easements, retention ponds, ponds, lakes, forest, or vacant land areas, which are owned by the county and are not part of a cultural property.

(b) It is the intent of the legislature that the residents of a qualified municipality receive full credit for taxes paid for qualified county properties and assigned capital assets to be purchased by the qualified municipality; to assure that qualified municipalities will have the facilities necessary to deliver municipal services; and to provide certainty as to how the purchase price for such properties will be determined.

(c)(1) A qualified municipality located within a county which has a special district for the provision of fire services shall continue to be part of such special fire district where the local Act creating such qualified municipality so provides or where the governing authority of the qualified municipality, within 30 days of taking office, elects by formal resolution to continue to be part of the special fire district by formal resolution, provided the governing authority of the qualified municipality delivers a copy of such resolution to the governing authority of the county within ten business days after the date the resolution is adopted.

(2) If a qualified municipality elected initially to remain in a fire services special district, such municipality shall be removed from such fire services special district by adopting a resolution stating its intent to be removed from the district and the date of removal, provided the governing authority of the qualified municipality delivers a copy of such resolution to the governing authority of the county at least 30 days prior to the date of removal.

(3) If the local Act does not provide that fire services shall be provided through the county special district or if the qualified municipality decides not to continue receiving fire services through the county, the fire services shall be discontinued by the county on the first day of the next fiscal year of the county that begins at least 180 days after the specified notice is received by the county.

(d) A qualified municipality located within a county that charges fees on a periodic basis for the provision of water or sewer services, or both, may elect to continue receiving such services for the same fees charged residents in the unincorporated area of the county. Such election may be set forth in the local Act creating such qualified municipality or be made by resolution of the governing authority of the qualified municipality within 30 days of

1 taking office, provided the governing authority of the qualified municipality delivers a copy
2 of such resolution to the governing authority of the county within ten business days after
3 the date the resolution is adopted.

4 (e)(1) A qualified municipality located within a county that charges fees on a periodic
5 basis for the provision of sanitation services, including garbage and solid waste disposal
6 and collection, may elect to continue receiving such services for the same fees charged
7 residents of the unincorporated area of the county. Such election may be set forth in the
8 local Act creating such qualified municipality or be made by resolution the governing
9 authority of the qualified municipality within 30 days of taking office, provided the
10 governing authority of the qualified municipality delivers a copy of such resolution to the
11 governing authority of the county within ten business days after the date the resolution
12 is adopted.

13 (2) Such qualified municipality may elect to terminate sanitation services by adopting
14 a resolution stating the date of removal, provided the governing authority of the qualified
15 municipality delivers a copy of such resolution to the governing authority of the county
16 at least 30 days prior to the date of removal.

17 (3) If the qualified municipality decides not to continue receiving sanitation services
18 through the county, the sanitation services shall be discontinued by the county on the first
19 day of the next fiscal year of the county which begins at least 180 days after the specified
20 notice is received by the county.

21 (f) The governing authority of the county shall provide to each of the county
22 commissioners and members of the General Assembly whose district includes any portion
23 of a qualified municipality a listing of all county owned properties located in the qualified
24 municipality and a listing of assigned capital assets for each such property. The listing of
25 the capital assets shall also include the current book value of each assigned capital asset.
26 If the date of incorporation of the qualified municipality occurred after January 1, 2007,
27 then the listing of properties and assets shall be provided within 60 days after the date of
28 incorporation or within 60 days of the effective date of this subsection, whichever date is
29 latest. If the date of incorporation for a qualified municipality was on or before January 1,
30 2007, then the listing of properties and assets shall be provided within 60 days after the
31 effective date of this subsection. Such information shall be made available to the public
32 for inspection and copying.

33 (g) The county shall not convey, otherwise encumber, move any fixtures or buildings, or
34 enter into any contractual obligations with respect to any qualified county property or
35 assigned capital assets located in the qualified municipality on or after the date of
36 incorporation to the end of the transition period provided in Code Section 36-31-8. The
37 governing authority of the county shall assign to the governing authority of the qualified

1 municipality all of its right, title, and interest in any executory contract in effect on the date
2 of incorporation with respect to any qualified county property or assigned capital assets that
3 the qualified municipality elects to purchase as provided in subsection (h) of this Code
4 Section. Such assignment shall be effective on the date the municipality assumes
5 ownership of such properties or as otherwise may be agreed between the governing
6 authority of the municipality and the governing authority of the county.

7 (h) When a qualified municipality is removed from a special district as provided in either
8 Code Section 36-31-11 or subsection (c) of this Code section, the qualified municipality
9 may elect to purchase from the county qualified county properties and assigned capital
10 assets. If a qualified municipality elects to purchase any qualified county property from
11 the county, whether or not the property is listed on the county property listing as provided
12 in section (f) of this Code section, the governing authority of the qualified municipality
13 shall provide written notice to the governing authority of the county specifying the
14 qualified county properties and assigned capital assets to be purchased and the date or dates
15 the qualified municipality will assume ownership of such property. Such notice shall be
16 provided with respect to each such property no less than 30 days prior to the date the
17 qualified municipality intends to assume ownership of the property.

18 (i) If a qualified municipality elects to purchase any qualified county property, the
19 purchase price may be determined by negotiation and agreement of the two governing
20 authorities. In that event, all of the county's right, title, and interest in such property shall
21 be transferred to the governing authority of the qualified municipality as provided in such
22 agreement.

23 (j)(1) Except as otherwise provided in paragraph (2) of this subsection, if a qualified
24 municipality elects to purchase one or more county police stations or fire stations the
25 purchase price shall be \$5,000.00 for each police station or fire station.

26 (2) If the county used a police station or fire station during the calendar year prior to the
27 date of incorporation to serve an area located outside the municipality, the purchase price
28 shall include a portion of the appraised value of the police station or fire station. That
29 portion shall equal the acreage served outside the municipality divided by the total
30 acreage served by the police station or fire station. If the portion served outside the
31 municipality exceeds 20 percent of the total service area, then from the date the
32 municipality assumes ownership of such police station or fire station, the municipality
33 shall be obligated to offer to lease the police station or fire station back to the county for
34 a period not to exceed one year for an amount of \$10.00 for the lease period.

35 (k) If a qualified municipality elects to purchase one or more cultural properties, the
36 purchase price shall be \$100.00 per acre. If a qualified municipality elects to purchase one

1 or more vacant properties, the purchase price shall be one payment of \$1,000.00 for all of
2 the vacant properties to be purchased by the qualified municipality.

3 (l) A qualified municipality may elect to pay the purchase price for one or more qualified
4 county properties amortized over a 25-year period at an interest rate equal to two
5 percentage points less than the legal rate of interest specified in subparagraph (a)(1)(A) of
6 Code Section 7-4-2. Upon the payment of \$5,000.00 and delivery of written notice from
7 the governing authority of the municipality to the governing authority of the county that
8 the municipality intends to pay the balance of the purchase price over a 25-year period or
9 upon payment by the qualified municipality of the purchase price, all of the county's right,
10 title, and interest in such properties and any assigned capital assets for such properties that
11 the qualified municipality elects to purchase shall be transferred to the governing authority
12 of the qualified municipality. Such transfer shall be effective on the date the municipality
13 intends to assume ownership of such properties as stated in the notice given pursuant to
14 subsection (h) of this Code Section. The governing authority of the county shall transfer,
15 execute, and deliver to the governing authority of the qualified municipality such
16 instruments as may be necessary to record the transfer of such right, title, and interest.

17 (m) In the event of a dispute between the county and the qualified municipality as to the
18 purchase of any qualified county property, the following process is available to the parties:

19 (1) The county or qualified municipality may file a petition in superior court of the
20 county seeking mandatory mediation. Such petition shall be assigned to a judge, pursuant
21 to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county
22 is located. The judge selected may also be a senior judge pursuant to Code Section
23 15-1-9.2 who resides in another circuit;

24 (2) The visiting or senior judge shall appoint a mediator within 30 days of receipt of the
25 petition. Mediation shall commence within 30 days of the appointment of a mediator.
26 The mandatory mediation process shall be completed within 60 days following the
27 appointment of the mediator. A majority of the members of the governing body of the
28 county and of the qualified municipality shall attend the initial mediation. Following the
29 initial meeting, the mediation shall proceed in the manner established at the initial
30 meeting. If there is no agreement on how the mediation should proceed, a majority of the
31 members of the governing body of the county and of the qualified municipality shall be
32 required to attend each mediation session unless another process is agreed upon. The cost
33 of alternative dispute resolution authorized by this subsection shall be shared by the
34 parties to the dispute pro rata based on each party's population according to the most
35 recent United States decennial census;

36 (3) If no agreement is reached at the conclusion of the mediation, either the county or the
37 qualified municipality may petition the superior court and seek resolution of the items

1 remaining in dispute. The visiting or senior judge shall conduct an evidentiary hearing
2 or hearings as such judge deems necessary and render a decision with regard to the
3 disputed items. The judge shall expedite the hearing and ruling if the court finds that the
4 dispute before the court is causing an impairment of the use of any property for the
5 delivery of services to residents of the unincorporated area of the county or the qualified
6 municipality.

7 (n) In the event a cultural property is transferred by a county to a qualified municipality
8 under this Code section, the qualified municipality shall be prohibited from imposing or
9 collecting user fees from residents of the county in excess of the amount of such fees
10 imposed or collected from residents of the qualified municipality.

11 (o) In the event a portion of a county owned property qualifies as a qualified county
12 property, and the remainder of the property was used by the county during the year prior
13 to the date of incorporation to provide services that will not be provided by the qualified
14 municipality, the qualified municipality may elect to purchase the entire property or facility
15 in the same manner as otherwise authorized under this Code section for the appropriate
16 type of qualified county property. Following such purchase, the qualified municipality
17 shall offer to lease such portion of the property which is to be continued as county-operated
18 property back to the county. Such lease shall be for \$10.00 per month for so long as the
19 county continues to use such property for a county provided service that is not provided by
20 the qualified municipality, unless otherwise agreed to by the governing authority of the
21 qualified municipality and the governing authority of the county.

22 (p) Property transferred to a qualified municipality from a county pursuant to this Code
23 section shall not be sold, leased, assigned, or transferred, in whole or in part, to any private
24 person or entity for a nonpublic use other than to the county from which it was transferred.
25 Any such sale to a county pursuant to this subsection shall be on the same terms as the
26 original transfer from the county to the municipality."

27 **SECTION 3.**

28 Said title is further amended by adding a new Code section to read as follows:

29 "36-31-13.

30 (a) As used in this Code section, the term:

31 (1) 'Charter' means a local Act of the General Assembly creating or proposing the
32 creation of a new municipal corporation.

33 (2) 'New municipal corporation' means a new municipal corporation of this state created
34 by or proposed to be created by a charter.

35 (3) 'Rezoning action' means:

36 (A) Adoption of a new zoning ordinance;

(B) Adoption of an amendment to a zoning ordinance which has the effect of rezoning real property from one zoning classification to another or changing the permitted use of property;

(C) Granting of a variance, conditional use, or other treatment which has the effect of allowing real property to be used for a use not otherwise permitted under a zoning ordinance; or

(D) Any other action which has the effect of changing the permitted use of property.

(b) During the period commencing with the effective date of charter until the date the new municipal corporation begins exercising planning and zoning powers, no county shall take any rezoning action affecting any part of the territory described in the charter as included or proposed for inclusion within the new municipal corporation. This prohibition shall be dissolved if the creation or continued existence of the proposed new municipal corporation under the charter definitively ceases to be possible because of defeat at a referendum election, definitive final failure to secure approval under the federal Voting Rights Act of 1965, as amended, or definitive failure of any other condition specified in the charter."

SECTION 4.

Said title is further amended in Code Section 36-82-1, relating to elections and requirements regarding bonded debt, by adding a new subsection to read as follows:

"(e.1)(1) As used in this subsection, the term:

(A) 'Bonds' means any bond to purchase properties or for capital improvements to existing properties or facilities which, at the time of the issuance of the bonds, were to be used by the county for the provision of any of the services listed in Article IX, Section II, Paragraph III of the Constitution of the State of Georgia and, subsequent to the issuance of the bonds, a new municipality took over the provision of such services.

(B) 'Bond proceeds' means the proceeds received by the county as the result of the sale of bonds.

(C) 'Net homestead digest' means for each qualified municipality the total net assessed value of all qualified homestead property located in that portion of a new municipality located in the county remaining after all other homestead exemptions are applied.

(D) 'Total homestead digest' means the total net assessed value of all qualified homestead property located in the county remaining after all other homestead exemptions are applied.

(2) This subsection shall apply only to a new municipal corporation created by local Act within a county which has a special district for the provision of local government services consisting of the unincorporated area of the county. In the event a new municipality lying wholly or partially in such a county is incorporated subsequent to the issuance of

1 any bonds by the county, the governing authority of the county shall pay to the governing
2 authority of the new municipality a portion of the bond proceeds. The amount to be paid
3 shall be determined as follows:

4 (A) If the resolution of the governing authority of the county pursuant to which such
5 bonds were issued specifies the amount to be spent in the area included in the new
6 municipality for the purchase of properties and for capital improvements, then such
7 amount plus a proportionate amount of the interest earned by the county on the bond
8 proceeds prior to the date payment to the new municipality is due, less any credit due
9 under subparagraph (C) of this paragraph shall be paid to the new municipality;

10 (B) If such resolution does not specify the amount to be spent in the area included in
11 the new municipality for the purchase of properties and for capital improvements, then
12 the amount to be paid shall be a portion of the bond proceeds plus a proportionate
13 amount of the interest earned by the county on such proceeds prior to the date payment
14 to the new municipality is due, less any credit due under subparagraph (C) of this
15 paragraph. Such portion shall equal the net homestead digest for the new municipality
16 divided by the total homestead digest;

17 (C) The county shall be given a credit against the amount due under either
18 subparagraph (A) or (B) of this paragraph for any payments that were made:

19 (i) By the county from bond proceeds to any third party prior to the date the payment
20 to the new municipality is due;

21 (ii) Pursuant to a valid contract in existence as of the effective date of the local Act
22 creating the new municipality; and

23 (iii) For the purchase of new properties or for capital improvements in the area
24 included in the new municipality; and

25 (D) The payment determined in accordance with subparagraphs (A) and (B) of this
26 paragraph shall be due ten days after a majority of the members of the initial city
27 council takes the oath of office.

28 (3) If the county and municipality fail to reach an agreement as to the amount to be
29 paid or any related matter, either the county or the municipality may petition the
30 superior court and seek resolution of the items in dispute. Such petition shall be
31 assigned to a judge, pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge
32 in the circuit in which the county is located. The judge selected may also be a senior
33 judge pursuant to Code Section 15-1-9.2 who resides in another circuit. The visiting or
34 senior judge shall conduct an evidentiary hearing or hearings as such judge deems
35 necessary and render a decision with regard to the disputed items."

SECTION 5.

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2 This Act shall become effective upon its approval by the Governor or upon its becoming law
3 without such approval.

SECTION 6.

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5 All laws and parts of laws in conflict with this Act are repealed.